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VERIGY US, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

13 VERIGY US, INC, a Delaware Corporation,
14 Plaintiff,
15 vs.
16 ROMI OMAR MAYDER, an individual;
17 WESLEY MAYDER, an individual; SILICON
18 TEST SYSTEMS, INC., a California Corporation;
and SILICON TEST SOLUTIONS, LLC, a
California Limited Liability Corporation,
inclusive,
19 Defendants.

Case No. C07 04330 RMW (HRL)

**DECLARATION OF MICHAEL W.
MORTON IN SUPPORT OF VERIGY'S
ADMINISTRATIVE MOTION TO
CLARIFY DEFENDANTS' MOTION FOR
"MODIFICATION" OR, IN THE
ALTERNATIVE, MOTION TO ENLARGE
TIME TO RESPOND TO DEFENDANTS'
MOTION FOR "MODIFICATION"**

1 1. I am an attorney licensed to practice law before all of the courts of the State of
 2 California. I am a partner in the law firm of Bergeson, LLP, counsel of record for plaintiff Verigy
 3 US, Inc. ("Verigy") in the above-captioned action. I have personal knowledge of the facts set
 4 forth in this declaration, and, if called to do so, I could and would competently testify thereto.

5 2. I submit this declaration in support of Verigy's administrative motion to clarify
 6 defendants' motion for "modification" of the preliminary injunction and, in the alternative, motion
 7 to enlarge time to respond to defendants' motion for "modification" (the "Motion for
 8 Modification").

9 3. The Motion for Modification was served on July 10, 2008, and it requests that the
 10 Court reconsider the Contempt Order entered on May 20, 2008 and/or the Preliminary Injunction
 11 Order entered on February 29, 2008. The Motion for Modification does not comply with Local
 12 Rule 7-9.

13 4. The Blanchard Declaration in Support of the Motion for Modification contains over
 14 twenty patent applications, patents and technical treatise excerpts purporting to support the
 15 Request for Modification, and it will take significant time to review these and obtain an expert
 16 declaration rebutting them. Given the purported gravity of these materials, and the drastic change
 17 in landscape that Defendants propose, Verigy should be given more time to evaluate and respond
 18 to those materials. Further, Defendants have two motions set for hearing on August 8, 2008 (a
 19 Rule 11 Motion and a Motion for Summary Adjudication), and Verigy's Opposition to these
 20 motions is due Friday, July 18, 2008. There are also three depositions set for the week of July 28,
 21 2008 that will require significant attorney time to prepare, especially since two of the depositions
 22 are of Verigy employees. Verigy would be substantially prejudiced if it had to oppose the Motion
 23 for Modification in only two weeks given the current schedule in the case and the gravity of
 24 Defendants' request.

25 5. Currently, Verigy's opposition papers are due on July 25, 2008, and Defendants'
 26 counsel has refused to grant an enlargement of time.

27 6. On July 11, 2008, counsel for Verigy sent an e-mail to Defendants' Counsel asking
 28 that they withdraw the Motion for Modification and file a motion that complies with Local Rule 7-

1 9 and F.R.C.P. 59(e). Ms. Morton requested that Defendants' counsel respond by noon on July
 2 14, 2008, but Defendants did not do so. A true and correct copy of this email from Mindy Morton
 3 to Defendants' Counsel is attached hereto as Exhibit A.

4 7. On July 14, 2008, I sent an e-mail to Jack Russo, Defendants' counsel, regarding this
 5 issue. I asked for a two week extension to respond to the summary judgment motion and Motion
 6 for Modification. Attached hereto as Exhibit B is a true and correct copy of my July 14, 2008
 7 email to Mr. Russo.

8 8. Mr. Russo responded by email on July 14, 2008, and refused to stipulate to an
 9 extension, instead requesting that Verigy agree to shorten time pursuant to F.R.C.P. 65(b)(4). As
 10 Rule 65(b)(4) does not apply to Defendants' Motion for Modification, and given the voluminous
 11 amount of technical documents offered in support of the motion, we did not agree to shorten time.
 12 Attached hereto as Exhibit C is a true and correct copy of Mr. Russo's July 14, 2008 email.

13 9. To the best of my knowledge, information and belief, the previous time
 14 modifications in this action are as follows : (a) three stipulated modifications to the briefing
 15 schedule for Verigy's motion for a preliminary injunction on September 6, 2007, September 11,
 16 2007, and October 30, 2007; (b) the briefing schedule for Verigy's Motion to Compel was
 17 shortened by stipulation on October 3, 2007; (c) the briefing schedule for Defendants' Motion to
 18 Compel Production of Documents was extended by stipulation and the hearing was reset for June
 19 10, 2008, but Verigy's motion to shorten time on a companion Motion for Protective Order was
 20 denied (eventually, both motions were resolved by stipulation and order issued by Magistrate
 21 Judge Lloyd, dated June 16, 2008; and (d) the briefing schedule for Defendants' Rule 11 Motion
 22 and Summary Judgment Motion was extended by stipulation due to the Court's modification of
 23 the hearing date.

24 10. Verigy's request to enlarge time for hearing on the Motion for Modification would
 25 not affect the Court's procedural schedule for this case.

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1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct and that this declaration was executed this 15th day of July, 2008 at
3 San Jose, California.

4 _____/s/
5 Michael W. Stebbins
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